



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XA736]

#### **Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Service Pier Extension Project on Naval Base Kitsap Bangor, Washington**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of a modified incidental harassment authorization.

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued a modified incidental harassment authorization (IHA) to United States Navy (Navy) to incidentally harass marine mammals incidental to the Service Pier Extension (SPE) project at Naval Base Kitsap Bangor, Washington.

**DATES:** This modified IHA is valid from the original date of issuance through July 15, 2021.

**FOR FURTHER INFORMATION CONTACT:** Robert Pauline, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at:

*<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>*. In case of problems accessing these documents, please call the contact listed above.

**SUPPLEMENTARY INFORMATION:**

## **Background**

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

## **History of Request**

On June 28, 2018, NMFS published a notice of our issuance of an IHA authorizing take of five species of marine mammals by Level A and Level B harassment incidental to the SPE project (83 FR 30406). Species authorized for take included killer whale (*Orcinus orca*), harbor porpoise (*Phocoena phocoena*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), and harbor seal (*Phoca vitulina*). The effective dates of that IHA were July 16, 2019 through July 15, 2020. On

February 4, 2019, the Navy informed NMFS that the project was being delayed by one full year. None of the work identified in the initial IHA had occurred and no marine mammals had been taken during the effective dates of the initial IHA (July 16, 2018 through July 1, 2019). Therefore, the Navy submitted a formal request for reissuance of the initial IHA with new effective dates of July 16, 2020 through July 15, 2021. NMFS re-issued this IHA on July 3, 2019 (84 FR 31844). The IHA covered construction work identical to what was analyzed and authorized through the initial IHA.

On October 14, 2020, NMFS received a request from the Navy for a modification to the current IHA due to an elevated harbor seal take rate. The Navy felt that without an increase in authorized take of harbor seal they would be forced to repeatedly shut down whenever animals entered into specified Level A harassment zones. This would likely prolong the duration of in-water construction activities and add increased costs to the project.

Therefore, the Navy requested a modification of the IHA to increase authorized take of harbor seal by Level A harassment. NMFS published the notice of the proposed IHA modification in the **Federal Register** on November 24, 2020 (85 FR 74989). The mitigation, monitoring, and reporting measures remain the same as prescribed in the initial IHA with minor revisions to mitigation requirements. No additional take is authorized for species other than harbor seal. Moreover, the IHA would still expire on July 15, 2021.

### **Description of the Specified Activity and Anticipated Impacts**

The modified IHA would include the same construction activities (*i.e.* impact pile driving, vibratory pile driving, vibratory pile removal) in the same locations that were described in the initial IHA. The monitoring and reporting measures remain the same as prescribed in the initial IHA, while minor revisions to the required mitigation measures have been authorized. NMFS refers the reader to the documents related to the initial IHA

issued on June 28, 2018 (83 FR 30406), for more detailed description of the project activities. Other relevant documents include the notice of proposed IHA and request for comments (83 FR 10689; March 12, 2018), notice of reissued IHA (84 FR 31844, July 3, 2019), and notice of proposed IHA modification (85 FR 74989; November 24, 2020).

#### *Detailed Description of the Action*

A detailed description of the construction activities is found in these previous documents. The location, timing, and nature of the activities, including the types of piles and methods of installation and removal are identical to those described in the previous notices.

#### **Public Comments**

A notice of proposed IHA modification was published in the **Federal Register** on November 24, 2020 (85 FR 74989). During the 15-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission). NMFS has posted the comments online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. A summary of the comments as well as NMFS' responses are below.

*Comment 1:* The Commission recommended that NMFS reduce all shut-down zones for phocids during vibratory and impact pile driving and removal to at least 25 m or even 10 m.

*Response:* NMFS does not concur with the Commission's recommendation of decreasing shutdown zones beyond what NMFS had proposed in the Federal Register notice of a modified IHA. While multiple shutdowns are problematic due to habituated seals entering shutdown zones, the Navy is equally concerned about the possibility of exceeding authorized take of seals. Additional measures authorized under this IHA will decrease shutdowns to a level that is practicable for the Navy while also increasing authorized take to avoid exceeding authorized limits. When any of the three most-

habituated seals enters into Level A harassment zones during either impact or vibratory driving, they will be recorded as Level A harassment takes. However, pile driving operations will be allowed to continue since the three habituated seals are responsible for most of the work stoppages and recorded takes during both impact and vibratory driving. These seals can be individually identified and monitored in order to avoid repeated takes of a single animal. Additionally, a smaller phocid Level A harassment and shutdown zone will be established and monitored based on *in situ* sound source verification (SSV) testing for impact driving. The SSV testing showed a Level A harassment isopleth of 92 m compared to a 217 m isopleth authorized in the existing IHA, resulting in lower takes of seals.

NMFS notes that the reduction in shutdown zones recommended by the Commission would not have any effect on take of harbor seals by Level A harassment. The Level A harassment zones (92 m for impact driving and 30 m for vibratory with the exception of habituated seals) would remain unchanged and takes would occur in those zones even if smaller shutdown zones were established and monitored. There could be some decrease in the number of shutdowns, but since most shutdowns are caused by the three most-habituated seals, who are exempted from the shutdowns at 92 m and 30 m under the modified IHA, any reduction would likely be minor. Furthermore, establishment and monitoring of the larger shutdown zones proposed by NMFS will limit exposure to sound levels that could result in permanent threshold shift (PTS) for seals other than the three highly-habituated animals.

*Comment 2:* The Commission recommended that NMFS increase the number of Level A harassment takes from 445 to 509 to account for the incidental taking of all harbor seals known to occur in the project area on the 48 remaining in-water work days.

*Response:* The Commission's recommendation is based on data that was collected near the time when the notice of proposed IHA was published (85 FR 74989; November

24, 2020). When NMFS was drafting the notice of proposed IHA, the Navy had recorded 58 takes of harbor seal by Level A harassment. The most up-to-date information regarding take of harbor seals after submission of the notice of proposed IHA to the **Federal Register** was provided by the Navy on November 21, 2020. The Navy reported that there had been 85 takes of harbor seal by Level A harassment up to that date with 48 days of in-water work remaining. NMFS agrees with the Commission's recommendation that eight harbor seal takes by Level A harassment should be authorized for each remaining day of in-water work resulting in 384 takes. This value has been added to the 125 takes by Level A harassment originally authorized resulting in a total of 509 Level A harassment takes. The total number of takes by both Level A harassment and Level B harassment has not changed (5,725) because the new Level A takes are assumed to occur to animals that would have previously been counted as taken by Level B harassment. Therefore, NMFS has reduced authorized Level B harassment take of harbor seal from 5,600 in the initial IHA to 5,216 in the modified IHA. The total numbers of incidental takes by Level A and Level B harassment as a percentage of population remains the same as shown in Table 2.

*Comment 3:* The Commission recommended that NMFS reassess the number of Level A harassment takes authorized for harbor seals during the Navy's Transit Protection Program (TPP) Year 1 activities and whether to authorize Level A harassment takes for Year 2 activities. The Commission also recommended that NMFS modify the Navy's TPP authorizations to reduce all shut-down zones for phocids during vibratory and impact pile driving and removal and increase the number of Level A harassment takes to account for the eight harbor seals known to occur in the project area on each day of activities.

*Response:* NMFS will consider the Commission's input regarding existing and future IHA's pertaining to Naval Base Kitsap-Bangor.

## **Changes from Proposed IHA Modification**

NMFS has increased authorized take of harbor seals by Level A harassment from 445 in the proposed IHA to 509 in the modified IHA while take by Level B harassment has been reduced from 5,280 to 5,216. The rationale for this change is provided in the Estimated Take section.

## **Description of Marine Mammals**

A description of the marine mammals in the area of the activities is found in the notice of proposed IHA and request for comments (83 FR 10689; March 3, 2018); notice of initial IHA issued on June 28, 2018 (83 FR 30406); notice of reissued IHA (84 FR 31844, July 3, 2019); and notice of proposed IHA modification (85 FR 74989; November 24, 2020), which remain applicable to this modified IHA as well. In addition, NMFS has reviewed recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts under the initial IHA.

## **Potential Effects of Specified Activities on Marine Mammals and their Habitat**

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in the documents supporting the initial IHA (83 FR 30406; June 28, 2018) which remains applicable to the issuance of this modified IHA. There is no new information on potential effects.

For harbor seals, observations indicate that eight identified individuals are often observed in relatively close proximity to the pile driving operations. Three of the eight animals occur more frequently, often on a daily basis. Given this, there is a higher likelihood than initially considered that these animals may incur PTS at a low-moderate level due to the repeated, longer-duration exposure to higher levels of sound.

## **Estimated Take**

A detailed description of the methods and inputs used to estimate take for the

specified activity are found in the notice of IHA for the initial authorization (83 FR 30406; June 28, 2018). The pile installation and removal equipment that may result in take, as well as the source levels, marine mammal stocks taken, marine mammal density data and the methods of take estimation applicable to this authorization remain unchanged from the previously issued IHA. The number of authorized takes is also identical with the exception of harbor seals.

The in-water work window (when ESA-listed salmonids are least likely to be present) runs from July 16, 2020 through January 15, 2021. Pile installation started September 4, 2020 with both vibratory and impact pile drivers being employed. After in-water work commenced, protected species observers (PSOs) began recording a specific group of harbor seals that consistently entered and remained in the Level A harassment zone. (Note that the term PSO has replaced marine mammal observer (MMO) in this notice as well as the draft modified IHA, although the functions and duties of each are identical). This has resulted in excessive shutdowns. Due to these frequent shutdowns the pile installation project is behind schedule. PSOs have identified at least eight harbor seals that frequent the project area and have become habituated to the in-water construction work. These seals include four pups and four adults which have all been individually identified. Three of the pups are seen in the project area on almost a daily basis. The pups approach the work site repeatedly during the day and stay in the work area for up to 90 minutes. Two of the pups and all of the adults have had occasional behavioral reactions to pile driving activity. For example, PSOs have recorded seals occasionally exhibiting behaviors such as startled response and fast swimming away from the activity.

On October 14, 2020, NMFS received a request from the Navy for a modification to the current IHA due to an elevated harbor seal take rate. NMFS concurred that under the current take rate, the Navy would likely exceed authorized take prior to the effective



end data of the IHA.

The Navy utilized NMFS' User Spreadsheet to calculate the Level A harassment isopleths associated with project activities which was developed as part of the NMFS Technical Guidance (2016) in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds. Inputs to the model for the initial IHA are shown in Table 1. This model calculated a 217-m Level A harassment isopleth for phocids (*i.e.* harbor seals) during impact driving of 36-in steel piles. The size of this PTS harassment zone for 36-steel pile impact driving is relatively large compared to PTS zones for both impact and vibratory driving of other pile types and sizes. The large zone size and habituation of a limited number of seals has contributed to a greater phocid take rate than was initially calculated.

**Table 1 – Inputs for Determining Distances to Cumulative PTS Thresholds**

36" Steel Impact		
Spreadsheet Tab Used	E.1) Impact pile driving	
	Initial IHA inputs	Modified IHA
Source Level (Single Strike/shot SEL)	173 dB (assumes 8 dB attenuation) <sup>1</sup>	177 dB (assumes 8 dB attenuation) <sup>2</sup>
Weighting Factor Adjustment (kHz) <sup>3</sup>	Weighting override (Grebner <i>et al.</i> 2016)	Weighting override (Grebner <i>et al.</i> 2016)
Number of strikes per day	1600	1600
Number of piles per day within 24-h period	2	2
Propagation (xLogR)	15	25
Distance of source level measurement (meters)	10	10

<sup>1</sup>Navy 2015.

<sup>2</sup>Wood *et al.* 2020.

<sup>3</sup>For impact driving, the transmission loss (TL) model described above incorporated frequency weighting adjustments by applying the auditory weighting function over the entire 1-second SEL spectral data sets. Additional information may be found in the **Federal Register** notice of issuance of a final IHA (83 FR 30420; June 28, 2018).

The Navy conducted SSV testing in September 2020 and compared the results to values generated by the NMFS User Spreadsheet in the initial IHA. Due to some of assumptions built into the model, the User Spreadsheet generates PTS isopleths that are

potentially overestimates. Testing was conducted during impact driving of four 36-in steel piles both with and without bubble curtains and recorded values were inserted into the use spreadsheet. The acoustic data for each pile strike were frequency weighted for phocidae following NMFS guidance (2016) and then averaged. This resulted in an average phocid weighted single strike SEL of 177 dB re 1 $\mu$ Pa<sup>2</sup>s at 10 m. Using the measured transmission loss of 25 (far field) and an assumption of 1,600 strikes per day, the resulting isopleth for phocids was 92 meters (Wood *et al.* 2020).

With NMFS' approval, the Navy retroactively utilized the revised Level A harassment isopleth of 92 m and recalculated the harbor seal take. Distances to each taken animal were recorded as part of the marine mammal monitoring plan. This reduced the total take count by 29, bringing the revised total from 87 to 58 takes. Approximately 33 percent of total takes occurred during impact driving outside the 92 m zone. The Navy reduced the shutdown zone size based on SSV data and retroactively recalculated take to allow for continuation of in-water construction while public comments were being solicited through this **Federal Register** notice (85 FR 74989; November 24, 2020) and the modified IHA was being finalized.

While vibratory is the preferred method of installation, impact driving has been needed daily due at the project site, largely due to sediment conditions. Additionally, there is a 30-m shut down zone (26-m injury zone) during vibratory driving. The PSOs reported that three habituated individuals frequently approach in close proximity to the piles within the 30-m shutdown zone during vibratory driving. Given these factors, the Navy concluded that would still be needed, even if the Level A harassment isopleth during impact driving is reduced from 217 m to 92 m.

PSOs report that up to eight animals frequent the project site and are believed to be habituated by varying degrees to in-water construction activities. Some of them regularly enter and remain within Level A harassment and shutdown zones. Three of

these individuals already noted above appear daily in the Level A harassment zone, while the remainder of the group of eight are observed less frequently (every other or every third day). All eight seals have been observed in the previous Level A harassment zone (217 m) on some occasions, with an average of five to six seen on each day. The Navy requested that NMFS authorize an additional four takes by Level A harassment per day. This would allow for one take per day by Level A harassment for each of the three daily visitors (three takes per day), as well as one additional Level A harassment take per day that could be incurred by any of the other five individuals if one of them entered the shutdown zone each day prior to detection, or if a few of them entered every few days. Based on the information provided, NMFS proposed that average of four harbor seal takes per day by Level A harassment would occur.

Based on the Commission's recommendation, NMFS has authorized increased take of harbor seal by Level A harassment as a precautionary measure. For example, one or more of the five less-habituated seals could become more habituated and join the three most habituated animals on daily incursions into a Level A harassment zone. If this occurred the Navy would likely exceed the authorized take limit NMFS put forth in the modified IHA proposal.

Based upon pile installation rates achieved to date as reported by the Navy, all of the days remaining within the in-water work window (48) will be needed to complete this segment of the project before the current work window closes. As described above and based on the Commission's recommendation, NMFS has authorized increased harbor take to eight per day by Level A harassment for an additional 384 takes ( $8 \text{ takes/day} \times 48 \text{ days}$ ) between now and January 15, 2021 when the in-water work window ends. The 384 takes are added to the initial 125 authorized takes for a total of 509 takes by Level A harassment. Most of these takes will occur to a smaller number of habituated individuals identified by the Navy.

The total numbers of incidental takes by Level A and Level B harassment, including proposed updated harbor seal Level A harassment and as a percentage of population, is shown in Table 2 below. The total number of takes (Level A and Level B harassment combined) has not changed because the new Level A takes are assumed to occur to animals that would have previously been counted as taken by Level B harassment. Therefore, NMFS has reduced authorized Level B harassment take of harbor seal from 5,600 in the initial IHA to 5,216.

**Table 2 —Total Numbers of Authorized Takes by Level A and Level B Harassment and as a Percentage of Population**

Species	Authorized Take		percent population
	Level A	Level B	
Killer whale	0	48	19.7
Harbor porpoise	0	2,728	24.3
Steller sea lion	0	503	1.2
California sea lion	0	7,816	2.6
Harbor seal	509	5,216	n/a

Since the total number of combined takes by Level A and Level B harassment remains unchanged (5,725) from the number authorized in the existing IHA, the rationale supporting our small numbers determination for the Hood Canal stock of harbor seal is applicable here and remains valid.

### **Description of Mitigation, Monitoring and Reporting Measures**

With the exception of the revised shutdown provisions for harbor seals discussed below, the monitoring, and reporting measures described here are identical to those included in the **Federal Register** notice announcing the initial IHA (83 FR 30406; June 28, 2018).

*Use of Vibratory Installation* —The Navy will employ vibratory installation to the greatest extent possible when driving steel piles to minimize high sound pressure levels associated with impact pile driving. Impact driving of steel piles will only occur when

required by geotechnical conditions or to proof load-bearing piles driven by vibratory methods.

*Timing Restrictions* — To minimize the number of fish exposed to underwater noise and other construction disturbance, in-water work will occur during the in-water work window previously described when ESA-listed salmonids are least likely to be present (USACE, 2015), July 16–January 15.

All in-water construction activities will occur during daylight hours (sunrise to sunset) except from July 16 to September 15, when impact pile driving will only occur starting 2 hours after sunrise and ending 2 hours before sunset, to protect foraging marbled murrelets during the nesting season (April 15–September 23).

*Use of Bubble Curtain*—A bubble curtain will be employed during impact installation or proofing of steel piles where water depths are greater than 0.67 m (2 ft). A noise attenuation device is not required during vibratory pile driving. If a bubble curtain or similar measure is used, it will distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column. Any other attenuation measure must provide 100 percent coverage in the water column for the full depth of the pile. The lowest bubble ring shall be in contact with the mudline for the full circumference of the ring. The weights attached to the bottom ring shall ensure 100 percent mudline contact. No parts of the ring or other objects shall prevent full mudline contact.

A performance test of the bubble curtain shall be conducted prior to initial use for impact pile driving. The performance test shall confirm the calculated pressures and flow rates at each manifold ring. The contractor shall also train personnel in the proper balancing of air flow to the bubblers. The contractor shall submit an inspection/performance report to the Navy for approval within 72 hours following the performance test. Corrections to the noise attenuation device to meet the performance stands shall occur prior to use for impact driving.

*Soft-Start*— During impact driving the Navy is required to initiate sound from the hammer at reduced energy followed by a 30 second waiting period, then two subsequent reduced energy strike sets.

A soft-start procedure will be used for impact pile driving at the beginning of each day's in-water pile driving or any time impact pile driving has ceased for more than 30 minutes.

*Establishment of Shutdown Zones and Disturbance Zones*—For all impact and vibratory driving of piles, shutdown and disturbance zones will be established and monitored. All shutdown and disturbance zones remain the same as those included in the initial IHA, except for the shutdown zone for harbor seals during impact driving of steel piles for which the modifications are described below. The Navy will focus observations within 1,000 m for all species during these activities but will record all observations. During impact driving of concrete piles the Navy will focus on monitoring within 100 m but will record all observations. The Navy will monitor and record marine mammal observations within zones and extrapolate these values across the entirety of the Level B zone as part of the final monitoring report. To the extent possible, the Navy will record and report on any marine mammal occurrences, including behavioral disturbances, beyond 1,000 m for steel pile installation and 100 m for concrete pile installation.

The shutdown zones are based on the distances from the source predicted for each threshold level. Although different functional hearing groups of cetaceans and pinnipeds were evaluated, the threshold levels used to develop the disturbance zones were selected to be conservative for cetaceans (and therefore at the lowest levels); as such, the disturbance zones for cetaceans were based on the high frequency threshold (harbor porpoise). The shutdown zones are based on the maximum calculated Level A harassment radius for pinnipeds and cetaceans during installation of 36-inch steel and concrete piles with impact techniques, as well as during vibratory pile installation and

removal. These actions serve to protect marine mammals, allow for practical implementation of the Navy's marine mammal monitoring plan and reduce the risk of a take. The shutdown zone during any non-pile driving activity will always be a minimum of 10 m (33 ft) to prevent injury from physical interaction of marine mammals with construction equipment.

During impact pile driving of steel piles, the shutdown, Level A, and Level B zones as shown in Table 3 will be monitored out to the greatest extent possible with a focus on monitoring within 1,000 m for steel pile and 100 m for concrete pile installation.

The Navy's IHA allows for the modification of shutdown zones if hydroacoustic monitoring is conducted. The Navy conducted a SSV test since the initial IHA was issued and it indicates that the Level A harassment isopleth for harbor seals occurs at 92 m instead of 217 m. Therefore, at the Navy's request and with concurrence from NMFS, the shutdown zone has been reduced from 220 m to 95 m during impact driving of all steel piles (*i.e.* both 36-in and 24-in steel piles). This is the only change to Level A or Level B harassment zone authorized as part of this modified IHA.

**Table 3 — Shutdown, Level A, and Level B Harassment Isopleths during Impact Driving of Steel Piles**

Marine Mammal Group	Level B Isopleth	Level A Isopleth	Shutdown Zone
Cetaceans	541 meters	740 meters	750 meters
Harbor Seal	541 meters	92 meters	95 meters
Sea Lions	541 meters	12 meters	15 meters

The shutdown, Level A, and Level B isopleths for all other impact driving remains unchanged from the notice of the issuance of the initial IHA (83 FR 30406; June 28, 2018).

The reduced size of the shutdown zone for harbor seals along with the increase in authorized take by Level A harassment should preclude the Navy from exceeding its authorized take limit for this species. However, even with a 95-m shutdown zone during impact driving and a 30-m shutdown zone during vibratory driving, it is highly likely that the Navy will continue to experience frequent work stoppages due to frequent visits by habituated harbor seals. This will result in continued schedule delays and cost overruns and may potentially require an extra year of in-water construction activities. Given this information, it is not practicable for the Navy to shut down or delay pile driving activities every time a harbor seal is observed in a shutdown zone.

Therefore, shutdowns will be initiated for harbor seals when observed approaching or entering the Level A harassment zones as described above, except when one or more of the three habituated harbor seals identified as daily visitors approaches or enters an established shutdown zone. In such cases, a single take by Level A harassment shall be recorded for each individual seal for the entire day and operations will be allowed to continue without interruption. The behavior of these three daily visitors will be monitored and recorded as well as the duration of time spent within the harassment zones. This information will be recorded individually for each of the three seals. If any other seals, including the five habituated seals identified as frequent visitors, approaches or enters into a Level A harassment zone, shutdown must occur.

The minimum shutdown zone during any pile driving activity will always be a minimum of 10 m. Shutdown is mandatory whenever an animal is within 10 m of pile driving location regardless of the exception noted above. In such instances, in-water pile driving operations may only continue after 15 minutes have passed or the animal is seen heading away from the 10-m shutdown zone.

The revisions in the mitigation, including the shutdown exception for habituated harbor seals, are necessary to allow for the practicable completion of the Navy's specified



activities. Although the predicted Level A harassment take numbers are higher than initially projected because of the behavior of the eight habituated animals, the likelihood of take by Level A harassment is lower than initially expected because the Level A harassment zone is smaller than initially predicted based on the new SSV. NMFS has considered the new take numbers and revised mitigation measures for harbor seals and determined that they will effect the least practicable adverse impact on harbor seals and their habitat. Nothing has changed since the initial IHA for other species or stocks and our analysis and conclusions remain the same.

*Visual Monitoring* — Monitoring must be conducted by qualified protected PSOs with minimum qualifications described in the **Federal Register** notice of the issuance of the initial IHA (83 FR 30406; June 28, 2018). During pile driving, there will be three-five PSOs working depending on the location, site accessibility and line of sight for adequate coverage.

*Reporting* — PSOs must record specific information as described in the **Federal Register** notice of the issuance of the initial IHA (83 FR 30406; June 28, 2018). Within 90 days after completion of pile driving and removal activities, the Navy must provide NMFS with a monitoring report which includes summaries of recorded takes and estimates of the number of marine mammals that may have been harassed. If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

In the unanticipated event that: 1) the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality; 2) an injured or dead animal is discovered and cause of death is known; or 3) an injured or dead animal is discovered and cause of death is not related

to the authorized activities, the Navy will follow the protocols described in the Section 3 of Marine Mammal Monitoring Report (Appendix D of the application).

Based on our evaluation of the applicant's measures in consideration of the increased estimated take for harbor seals, as well as the modified shutdown provisions for harbor seals, NMFS has re-affirmed the determination that the required mitigation measures provide the means effecting the least practicable impact on harbor seals and their habitat.

### **Determinations**

With the exception of the revised harbor seal shutdown provisions, the Navy's in-water construction activities as well as monitoring and reporting requirements are unchanged from those covered in the initial IHA. The effects of the activity, taking into consideration the added mitigation and related monitoring measures, remain unchanged, notwithstanding the increase to the authorized amount of harbor seal take by Level A harassment. The nature of the pile driving project precludes the likelihood of serious injury or mortality. While injury could occur in a small group of habituated animals (eight or fewer), it would likely be limited to PTS at lower frequencies where pile driving energy is concentrated, and unlikely to result in significant impacts to individual fitness, reproduction, or survival of these individuals.

With approximately 48 in-water construction days remaining, NMFS has authorized an increase in harbor seal take by Level A harassment to 509. Even in consideration of the increased numbers of take by Level A harassment, the impacts of these exposures, as noted above, may result in moderate injury to a limited number of harbor seals but are not expected to accrue to the degree that the fitness of any individuals is markedly impacted. Further, given the small number of individuals potentially impacted in this manner, no impacts on annual rates of recruitment or survival are likely to result.

Separately, as described previously, the increase in Level A harassment take corresponds to a commensurate decrease in the predicted number of Level B harassment and the total number of takes remains unchanged. Therefore, we re-affirm that small numbers of harbor seals will be taken relative to the population size of the Hood Canal stock of harbor seal.

In conclusion, there is no new information suggesting that our effects analysis or negligible impact finding for harbor seals should change.

Based on the information contained here and in the referenced documents, NMFS has reaffirmed the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the proposed authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the proposed authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) the Navy's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and (5) appropriate monitoring and reporting requirements are included.

#### **Endangered Species Act (ESA)**

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

#### **National Environmental Policy Act**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the modification of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the modified IHA qualifies to be categorically excluded from further NEPA review.

### **Authorization**

NMFS has issued a modified IHA to the for in-water construction associated with the SPE project on Naval Base Kitsap Bangor, Washington effective until July 15, 2021. The only change is an increase in the authorized take of harbor seal take by Level A harassment from 125 to 509.

Dated: December 21, 2020.

Donna S. Wieting,  
Director, Office of Protected Resources,  
National Marine Fisheries Service.

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